

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL
EMPLOYEES, AFSCME, AFL-CIO

Involving Certain Employees of

SPOONER JOINT SCHOOL DISTRICT #1

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: Case III
: No. 13754 ME-556
: Decision No. 9832
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ORDER AFFORDING PETITIONER OPPORTUNITY TO AMEND PETITION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted pursuant to Section 111.70 among all regular full-time and regular part-time custodians and bus drivers in the employ of Spooner Joint School District #1, Spooner, Wisconsin, to the exclusion of all other employees, to determine whether said employees desire to be represented for the purposes of collective bargaining by the Petitioner; and hearing on said petition having been conducted on July 7, 1970, at Spooner, Wisconsin, before Herman Torosian, Hearing Officer; and the Commission having reviewed the evidence and arguments of the parties, being satisfied that the unit desired by the Petitioner for the purposes of collective bargaining is not an appropriate collective bargaining unit and however, being satisfied that said Petitioner be given an opportunity to amend its petition, if it so desires;

NOW, THEREFORE, it is

ORDERED

That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, be afforded the opportunity to amend its petition to indicate

the unit or units it determines appropriate for the purposes of collective bargaining for employees of Spooner Joint School District #1.

Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of August, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner

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MEMORANDUM ACCOMPANYING ORDER AFFORDING
PETITIONER OPPORTUNITY TO AMEND PETITION

The petitioning Union seeks a representation election in a claimed appropriate bargaining unit, consisting of all regular full-time and regular part-time bus drivers and custodians in the employ of the Employer, excluding other employees of the Employer.

The Employer contends that the unit sought by the Union is inappropriate since it would exclude food service employees. There is no contention by either party that any other employees should be included in the unit.

Section 111.02(6) of the Wisconsin Employment Peace Act defines the term "collective bargaining unit" as "all of the employees of one employer, except that where a majority of such employees engaged in a single craft, division, department or plant shall have voted by secret ballot as provided in section 111.05 (2) to constitute such group a separate bargaining unit they shall be so considered"

Section 111.05(2) provides that

"(2) Whenever a question arises concerning the determination of a collective bargaining unit as defined in section 111.02 (6), it shall be determined by secret ballot, and the board, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employees in any craft, division, department or plant as to the determination of the collective bargaining unit."

In establishing bargaining units among municipal employees Section 111.70(4)(d) requires that Sections 111.02(6) and 111.05(2) apply, except that craft employees, in municipal employment, are considered to be separate units.

Since the unit claimed by the Union does not consist of all of the employees of the Employer, the Commission must determine whether the group of employees claimed appropriate by the Union does, in fact, constitute a separate department, division or plant, and if so, then the employees therein are given the opportunity to determine for themselves whether they desire to constitute a separate bargaining unit.

The criteria which the Commission utilizes in determining whether employees are engaged in a separate division or department include the employees' working conditions, their work location, their duties and functions and their supervision.^{1/} In the instant case, there are eighteen employees who drive bus only; six employees who drive bus and also do custodial work; one employee who drives bus, cooks and transports food from the cafeteria to the different schools; nine employees who are custodians; and seven food service employees.

The bus drivers make two trips daily transporting children to and from school. Drivers must possess a state license and pass a physical examination every year. The earnings of said employees depend on their route which in time may vary from an hour to two hours per trip. The bus drivers work only during the school term, and have their own supervisor who is directly responsible to the superintendent of schools.

The custodians are employed for the entire year on an eight hour per day and forty hour per week basis. Although the nine full-time custodians are located in various schools, they are nevertheless under

^{1/} Joint School District #1 - City of West Bend; Village of Jackson; Towns of Addison, Barton, West Bend, Trenton, Jackson and Pope, County of Washington, Wisconsin, Decision No. 8648; Methodist Hospital, Decision No. 8506-A and 8508-A, 7/68; St. Michael's Hospital, Decision No. 8005, 4/67; Dodge County, Decision No. 6067, 7/62.

the supervision of a single supervisor, who is directly responsible to the superintendent of schools. During the school term each custodian is assigned to a particular school but during the summer they may work in any or all of the school buildings.

The food service personnel have their own supervisor who reports directly to the superintendent of schools. The duties performed by the food service personnel are separate and distinct from the duties performed by the other employees of the Employer. Said employees work six hours a day for five days a week during the school term.

While the bus drivers, custodial and food service employees essentially receive the same benefits, the custodians, bus drivers and food service employees are employed in three separate departments. This is apparent from the fact that they are separately supervised and that they perform separate duties. The Union would include in an appropriate bargaining unit employees employed in two departments to the exclusion of employees employed in the third department, the food service employees.

If the parties were in agreement that the unit should consist of bus drivers, custodians and food service employees, the Commission would find such unit appropriate and direct a representation election therein. They have not so agreed. Under the statute, in order for the bus drivers and custodians to constitute an appropriate unit, the food service employees would have to establish themselves as a unit separate and apart from the bus drivers and custodians. Furthermore, under the statute, the bus drivers, being in a separate department, could establish themselves as a separate unit, as could the custodians. Since neither during the course of the hearing, nor at any time thereafter, has the Union indicated a change in its position with respect to the unit, and in light of the Commission's determination as indicated herein, we are affording the Union the opportunity to indicate to the Commission whether it desires a separate unit vote for bus drivers and a separate unit vote for custodians. Unless the Union notifies the Commission, in writing,

by August 15, 1970,^{2/} that it desires to amend its petition wherein it requests separate unit votes for only the bus drivers and the custodians, the Commission shall determine that the appropriate unit consists of the employes in the three departments and shall direct a representation election among the employes in that one unit. If the Union requests separate unit votes among the bus drivers and custodians, the Commission will then direct such separate unit votes as well as separate representation elections among the employes in said two departments only. If the Union also requests a separate unit vote among the food service employes, the Commission will also direct a separate unit vote as well as a separate representation election among the employes in the latter department. If the employes in two of the departments establish two separate units and should the employes in the third department vote against said separation, the employes in the latter department, despite their vote, would constitute a separate residual unit, since the employes in the other departments would have voted to establish two separate units. If separate units are established in any of the departments, the representation ballots cast by those employes in said units will be tallied separately to determine whether the employes in said established units desire to be represented by the Union for the purposes of collective bargaining. If the employes in only one department establish a separate unit, the representation ballots cast by the employes in that department will be tallied separately, and since the residual unit will consist of the employes of the two remaining departments the representation ballots cast by the employes in said departments will be co-mingled and tallied together.

Dated at Madison, Wisconsin, this 4th day of August, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner

^{2/} And at the same time send a copy to the Employer.